

REMARKS

Claims 1-7 and 11-21 are pending in the application.

Claims 1 and 11 are amended to recite, “wherein the sucking and the discharging positions are controlled by automatic control.” Support can be found, for example at page 5, lines 5-13 of the specification as originally filed. Claim 18 has been amended to correct an inadvertent error. No new matter is added.

Entry of the Amendment along with reconsideration and review of the claims on the merits are respectfully requested.

Formal Matter

Applicants kindly request the Examiner’s consideration and acknowledgement of the outstanding IDS filed on February 17, 2005.

Claim Rejections - 35 U.S.C. § 103

A. Claims 1-5, 7 are rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over JP 62184357 (JP ‘357) in view of Qureshi et al. (US 5,383,372).

The Examiner cites JP ‘357 as teaching a method of mixing including stirring liquid with an automatic clinical specimen inspecting apparatus, etc., by alternately repeating a process for lowering a pipette to hold the top end under the liquid surface and sucking the liquid and process for raising the pipette to hold the top end above the liquid surface and discharging the liquid.

The Examiner recognizes that the JP ‘357 reference fails to disclose moving the pipette to a different horizontal position of the nozzle so that when the fluid is discharged, discharged fluid

is discharged directly into the liquid in the container at a discharging position horizontally different from the sucking position.

The Examiner cites Qureshi as teaching that a pipette may be hand held for the suction and dispensing of a liquid (and also discharged with air blown out if desired) for a more precise measurement and delivery of liquids.

In view of the teaching of Qureshi that one may use a hand held pipette to suck and dispense liquids, the Examiner believes that it would have been obvious to one of ordinary skill in the art to modify the step of JP '357 with a use of a handheld pipette so that mechanical equipment costs are minimized when using the mixing method of JP '357. The Examiner notes that when a hand held device is used, the process of mixing as taught by JP '357 would assertedly have inherent variations in the horizontal and vertical positioning of the hand held pipette nozzle by the user when performing the suction, lifting, and discharge, since the human hand may not readily replicate an exact positioning of a machine.

B. Claims 6, 11-17 are rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over JP '357 in view of Qureshi et al as applied to claim 1 above, and further in view of Makino et al (US 5,555,767).

The Examiner recognizes that JP '357 in view of Qureshi fails to disclose discharging the liquid toward an inclined wall of container.

The Examiner cites Makino as disclosing that a mixing method of blood may be used with a container having straight sides as seen in figures 1-2 or with a container having inclined

sides in figures 3-5. The Examiner cites Makino as teaching that one may place a nozzle in a position near and directed toward the incline when dispensing the fluid into the container and further as teaching that a container with an inclined wall provides good stirring and mixing performance.

In view of the teaching of Makino, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to provide for the method of JP '357 as modified by Qureshi with the use of a container with an inclined wall and further dispense the fluid toward the incline so as to produce good stirring and mixing performance with the discharge of the fluid into the main liquid sample.

Applicants respond as follows.

As previously discussed, Claims 1 and 11 are amended to include an automatic control mechanism for controlling the different sucking and discharging positions.

Applicants submit that the combination of JP '357 with Qureshi or further in view of Makino fails to render obvious the present invention.

According to the method of the present invention, liquid is efficiently stirred by convection so that sufficient stirring can easily be carried out. The method is economically advantageous because the liquid can be stirred by only providing a liquid-sucking and -discharging means such as a nozzle or the like using an automatic control mechanism for controlling the different sucking and discharging positions.

An automatic control mechanism is not disclosed or taught in Qureshi's hand-controlled movement of a pipette. Thus, controlling different sucking and discharging positions by an automatic control mechanism of the present invention would not be rendered obvious by the combination of references to JP '357 and Qureshi, and further in view of Makino.

As shown in the Declaration submitted on December 24, 2003, in response to the Office Action dated June 24, 2003, the stirring carried out by the suction and the discharge by automatic control at horizontally different positions clearly has an unexpectedly excellent effect in comparison with the stirring carried out by the suction and the manual discharge at the alleged vertically different positions described in the cited references.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a).

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.116
U.S. APPLN. NO. 09/817,251

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.


Respectfully submitted,

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